

### **REMARKS**

Claims 1-10 are pending in this application with claims 1 – 6, 9 and 10 being amended and claims 7 – 8 being canceled by this response. Claims 1 and 10 have been amended to include certain features of originally filed claims 3 and 8. Claim 5 is amended to be Independent and includes features similar to amended claim 1 and includes the range of the ingredients identified in originally filed claim 5. Support for the amendments to claims 1, 5, 6 and 10 is found throughout the specification and originally filed claims. Thus, it is respectfully submitted that no new matter has been added by these amendments.

#### **Substitute Specification**

In view of the various objections and rejections to the Specification contained in the Non-Final Rejection (hereinafter, “Rejection”) dated December 19, 2007, Applicant respectfully submits a substitute specification for the instant U.S. Patent Application. This response includes a marked-up copy of the substitute specification showing all deleted matter as strike-through and all added matter as underlined and a clean copy (without markings) of the substitute specification. The amendments/corrections contained in the substitute specification address the issues identified on pages 2 – 7 of the Rejection and will be discussed in more detail below under the appropriate heading. For the purpose of ease and clarity, all amendments to the specification discussed below will refer to the page and line number of the originally filed specification. Additionally, the Specification has been formally amended to clarify the statement on page 5, lines 20-22 as discussed below with respect to the Objections to the Specification. Applicant respectfully submits that no new matter is added by any of the amendments contained in the substitute specification. Therefore, Applicant respectfully submits that the substitute specification submitted herewith complies with the requirements of MPEP 608.01(q).

#### **Priority Claim**

The Rejection notes that, in order to claim the benefit of a prior filed application, a specific reference to the prior filed application must be included in the first sentences of the specification following the title. The substitute specification submitted herewith includes the required formal amendment to insert the heading entitled “Cross-Reference to Related

Applications” and identify that “This U.S. Nonprovisional Patent Application derives priority from PCT Patent Application No. PCT/JP2003/011775 filed on September 16, 2003 which claims priority from Japanese Patent Application Serial No. JP2002-271730 filed on Sept 18, 2002.” Applicant respectfully submits that no new matter is added by this amendment to the specification as the priority claim was properly included on the executed Declaration filed with the Application.

### **Objection to the Drawings**

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include certain reference characters not mentioned in the description. Applicant formally amends the paragraph beginning on page 6, line 15 (of the originally filed specification) to recite that “As shown in Fig 1, items C, EC and ECg refer to (+)-catechin (C); epicatechin (EC) and (-)-epicatechin-3-O-(3-O-methyl)gallate, respectively.” These abbreviations are commonly known to those skilled in the art as evidenced on page 1909 of the article authored by Sano et al. appearing in the Journal of Agricultural and Food Chemistry, 1999, Vol. 47, No. 5. that was submitted in Applicant’s Information Disclosure Statement. Therefore, Applicant respectfully submits that no new matter is added by this amendment to the specification.

### **Objection to the Specification**

The disclosure is objected to for certain informalities identified on page 5 of the Rejection. Specifically, on page 5, lines 16 – 19 of the present specification, the Rejection asserts that it is unclear how the tannin content is related to the rest of the invention. Page 5, lines 16 – 19 of the present specification have been amended for purposes of clarity to that “The tannin content in the tea leave extract solutions containing the catechin of the present invention is higher than those in existing green tea drinks. If necessary, however, juices of citrus species such as grape fruit, bitterness-masking peptides and the like may be used as ingredients for masking bitterness”. Thus, as Tannin is known to taste bitter, the higher content of tannin in the claimed invention may result in the need to include a masking agent for masking bitterness. Therefore, Applicant respectfully submits that this formal amendment to the specification clarifies how tannin relates to the claimed invention. Additionally, on page 5, line 22, the Rejection asserts that the term “IgE” is unclear. IgE is known to be the antibody primarily involved in allergic

reaction response. Therefore, Applicant has formally amended the specification to identify IgE as “immunoglobulin E”. In view of the above remarks and amendments to the specification, Applicant respectfully submits that these objections have been satisfied and should be withdrawn.

#### **Objection to the Claims**

Claim 1 is objected to because the term “epigallocatechin-3-O-(3-O-methyl)gallate” is misspelled. Claim 1 has been amended in accordance with the suggestion of the examiner to correct the misspelling. Consequently, withdrawal of the objection is respectfully requested.

#### **Rejection under 35 USC 112, first paragraph**

Claims 1 – 10 are rejected under 35 USC 112, first paragraph as failing to comply with the enablement requirement. Specifically, the claimed subject matter includes “strychnine” which is a known poison and the ranges specified fall within the ranges known to be lethal and therefore one skilled in the art would not associate using strychnine as an anti-allergenic in food or drink. Applicant respectfully submits that “strychnine”, as it appears throughout the specification and claims, was an inadvertent typographical error that resulted during translation of the originally filed Japanese Patent Application. The term “strychnine” was mistranslated from the Japanese word “sutorekuchinin” contained in both the Japanese Application and subsequent PCT Application, both of which were authored in Japanese. The correct translation of the term “sutorekuchinin” is “strictinin”. Therefore, Applicant has amended the specification and claims to replace all instances of “strychnine” with the term “strictinin”. Applicant respectfully submits that no new matter is added by the correction of this typographical error as “strictinin” is fully supported in the originally filed Japanese Patent Application. Therefore, the term “strychnine” is used in error and thus is not an element of the claimed invention. Contrary to “strychnine”, “strictinin” is not a known poison and is not lethal to humans when included in the range identified in the present claimed invention. Consequently, withdrawal of the rejection is respectfully requested.

**Rejection under 35 USC 112, second paragraph**

Claims 1 – 10 are rejected under 35 USC 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Rejection asserts that it is unclear whether or not the term “strychnine” is included in the group or whether it is an optional ingredient. As discussed above, the inclusion of the term “strychnine” was a typographical error that occurred during translation from the original Japanese language specification and should therefore be “strictinin”. Applicant respectfully submits that “strictinin” should be included as part of the group and has amended claim 1 to remove the comma before the term “strictinin” to clarify the scope of the group claimed in claim 1. Consequently, withdrawal of the rejection of claims 1 – 10 is respectfully requested.

Additionally, claims 1 – 9 are rejected because it is unclear what is meant by the term “functional food/drink”. Applicant has formally amended claims 1 – 4 and 9 to replace the term “functional food/drink” with the term “food/drink having an antiallergenic action”. Thus, in view of the amendments to the claims, Applicant respectfully submits that claimed “food/drink” has “an antiallergenic action” associated therewith. Consequently, withdrawal of the rejection of claims 1 – 4 and 9 is respectfully requested.

Claim 2 is rejected because it is unclear from the claim language if applicant is implying that the food/drink comprises EGCG3”Me, GCG3”Me, EGCG4”Me, CG4”Me and strychnine. Applicant respectfully submits that the Examiner’s assertion regarding claim interpretation with respect to claim 2 is correct. Thus, claim 2 has been amended in accordance with the suggestion of the Examiner to recite “the one or more ingredients selected from the group consisting of EGCG3”Me, GCG3”Me, EGCG4”Me, GCG4”Me and strychnine strictinin are obtained as tea extracts and/or are contained in ground tea”. Consequently, withdrawal of the rejection of claim 2 is respectfully requested.

**Rejection of Claim 1 under 35 U.S.C. § 102(b)**

Claim 1 is rejected under 35 U.S.C. § 102(b) as being anticipated by Shokuhin Kenkyu Seika Jyouthou (National Food Research Institute).

The present claimed invention provides a food/drink having antiallergenic action comprising one or more selected from the group consisting of epigallocatechin-3-O-(3-O-methyl)gallate (EGCG3"Me) and gallocatechin-3-O-(3-O-methyl)gallate (GCG3"Me) as an optical isomer thereof, epigallocatechin-4-O-(4-O-methyl)gallate (EGCG4"Me) and gallocatechin-4-O-(4-O-methyl)gallate (GCG4"Me) as an optical isomer thereof and strictinin, wherein one or more ingredients of EGCG3"Me, GCG3"Me, EGCG4"Me, GCG4"Me and strictinin are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg and the EGCG3"Me, GCG3"Me, EGCG4"Me, GCG4"Me and strictinin are extracted from at least one selected from the group consisting of Benifuki, Benihomare and Benifuji. For the reasons presented below Shokuhin Kenkyu Seika Jyohou, hereinafter "Shokuhin", fails to disclose each feature claimed in amended claim 1.

Shokuhin describes the variation in the content of EGCG3"Me due to the time the tea was picked and tea type prepared from particular tea leaves. While Shokuhin describes using EGCG3"Me as an antiallergenic, Shokunhin is merely concerned with identifying preferred times for picking the leaves and the preferred type of tea prepared from the leaves in order to increase EGCG3"Me content. This is fundamentally different from the claimed invention which provides a "food/drink having an antiallergenic action...wherein one or more ingredients of EGCG3"Me, GCG3"Me, EGCG4"Me, GCG4"Me and strictinin are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg and the EGCG3"Me, GCG3"Me, EGCG4"Me, GCG4"Me and strictinin are extracted from at least one selected from the group consisting of Benifuki, Benihomare and Benifuji". There is no enabling disclosure in Shokuhin of a range of EGCG3"Me that is useful in an antiallergenic food or drink. Shokuhin is not at all concerned with an amount of EGCG3"Me for use in a food or drink. Rather, Shokuhin seeks to maximize an amount of EGCG3"Me based on the time the leave is picked and the tea produced therefrom. Therefore, as each feature of amended claim 1 is neither disclosed nor suggested by Shokuhin, Applicant respectfully submits that Shokuhin does not anticipate the present claimed invention. Consequently, withdrawal of the rejection of claim 1 is respectfully requested.

**Rejection of Claims 1 - 6 under 35 U.S.C. § 102(b)**

Claim 1 - 6 are rejected under 35 U.S.C. § 102(b) as being anticipated by Sano et al. ("Novel Antiallergic Catechin Derivatives Isolated from Oolong Tea", J. Agric. Food. Chem.)

The present claimed invention provides a food/drink having antiallergenic action comprising one or more selected from the group consisting of epigallocatechin-3-O-(3-O-methyl)gallate (EGCG3"Me) and gallocatechin-3-O-(3-O-methyl)gallate (GCG3"Me) as an optical isomer thereof, epigallocatechin-4-O-(4-O-methyl)gallate (EGCG4"Me) and gallocatechin-4-O-(4-O-methyl)gallate (GCG4"Me) as an optical isomer thereof and strictinin, wherein one or more ingredients of EGCG3"Me, GCG3"Me, EGCG4"Me, GCG4"Me and strictinin are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg and the EGCG3"Me, GCG3"Me, EGCG4"Me, GCG4"Me and strictinin are extracted from at least one selected from the group consisting of Benifuki, Benihomare and Benifuji. For the reasons presented below Sano et al., fails to disclose each feature claimed in amended claim 1.

The Rejection asserts that Sano, in the section entitled "Results" on page 1907 provides enabling anticipatory disclosure of the present claimed food/drink having antiallergenic action. Applicant respectfully disagrees. No where in section relied upon in the Rejection does Sano disclose or suggest a "food/drink having an antiallergenic action...wherein one or more ingredients of EGCG3"Me, GCG3"Me, EGCG4"Me, GCG4"Me and strictinin are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg and the EGCG3"Me, GCG3"Me, EGCG4"Me, GCG4"Me and strictinin are extracted from at least one selected from the group consisting of Benifuki, Benihomare and Benifuji".

The Rejection asserts that Sano, in Figure 2 provides an example of a food or drink having an EGCG3"Me content of 241 mg in .5 liters of water and thus anticipates the present claimed invention. Applicant respectfully disagrees. Figure 2 and the paragraph relied on in the Rejection on page 1907 of Sano does not disclose the present claimed invention. Rather, the cited section of Sano merely describes an amount of C-1 (241 mg) that was obtained through rechromatographing Fraction C on a reverse-phase column. In other words, this section describes an amount of C-1 that was obtained from 300 grams of Oolong Tea and is NOT the amount of

C-1 that is contained in any food or beverage. In fact, there is nothing in Sano that provides any enabling disclosure regarding the amount of any catechin for use in a food and/or beverage. Rather, Sano describes experiments with mice to determine the amount of allergenic inhibition provided by pure extracts of various catechins. There is nothing that describes food/drink having an antiallergenic action...wherein one or more ingredients of EGCG3"Me, GCG3"Me, EGCG4"Me, GCG4"Me and strictinin are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg and the EGCG3"Me, GCG3"Me, EGCG4"Me, GCG4"Me and strictinin are extracted from at least one selected from the group consisting of Benifuki, Benihomare and Benifuji" as in the claimed invention.

The Rejection further notes that the claimed daily intake values are considered intended use and therefore are not given patentable weight. Applicant respectfully disagrees. Specifically, Applicant asserts that the daily intake values claimed in amended claim 1 deserve patentable weight because the "set definite boundaries on the patent protection sought" (see MPEP 2173.05(g) and see also *In re Barr*, 444 F.2d 588, 170 USPQ 33 (CCPA 1971)). The daily intake of 3mg to 300mg corresponds to the range of at least one of "EGCG3"Me, GCG3"Me, EGCG4"Me, GCG4"Me and strictinin" in the claimed invention and produces an actual result and is not merely an intended use.

Claims 2 – 4 are dependent on claim 1 and are considered patentable for the reasons presented above with respect to claim 1.

Amended independent claim 5 is considered patentable for the reasons presented above with respect to claim 1. Claim 5 is also considered patentable because Sano fails to disclose or suggest that the "one or more ingredients of EGCG3"Me, GCG3"Me, EGCG4"Me, GCG4"Me and strictinin are contained at 0.01 mg to 1,000 mg per one liter to daily intake of 0.3 mg to 3,000 mg, wherein EGCG3"Me, GCG3"Me, EGCG4"Me, GCG4"Me and strictinin are extracted from at least one selected from the group consisting of Benifuki, Benihomare and Benifuji" as in the claimed invention. Unlike the claimed invention, the discussion of 241 mg of C-1 merely represents the amount of C-1 extracted using .5 liters of water and NOT an amount of any of the claimed ingredients as part of a food or drink having antiallergenic action. Consequently, withdrawal of the rejection of claim 5 is respectfully requested.

Claim 6 is dependent on claim 5 and is considered patentable for the reasons presented above with respect to claims 1 and 5.

In view of the above remarks, Applicant respectfully submits that Sano fails to disclose or suggest anything makes the invention as claimed in claims 1 and 5 unpatentable. As claims 2 – 4 are dependent on claim 1 and claim 6 is dependent on claim 5, it is respectfully submitted that these claims are patentable over Sano. Consequently, withdrawal of the rejection of claims 1 – 6 is respectfully requested.

**Rejection of Claims 1 – 4 and 9 under 35 U.S.C. § 102(b)**

Claim 1 – 4 and 9 are rejected under 35 U.S.C. § 102(b) as being anticipated by Yamamoto et al. (EP 1 157 693).

The present claimed invention provides a food/drink having antiallergenic action comprising one or more selected from the group consisting of epigallocatechin-3-O-(3-O-methyl)gallate (EGCG3"Me) and gallocatechin-3-O-(3-O-methyl)gallate (GCG3"Me) as an optical isomer thereof, epigallocatechin-4-O-(4-O-methyl)gallate (EGCG4"Me) and gallocatechin-4-O-(4-O-methyl)gallate (GCG4"Me) as an optical isomer thereof and strictinin, wherein one or more ingredients of EGCG3"Me, GCG3"Me, EGCG4"Me, GCG4"Me and strictinin are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg and the EGCG3"Me, GCG3"Me, EGCG4"Me, GCG4"Me and strictinin are extracted from at least one selected from the group consisting of Benifuki, Benihomare and Benifuji. For the reasons presented below Yamamoto et al., fails to disclose each feature claimed in amended claim 1.

Yamamoto ostensibly appears to be a European Patent Application that is derived from the Sano article discussed above. Therefore, Applicant respectfully submits that the arguments presented above with respect to Sano are applicable and incorporated herein by reference. In fact, there is nothing in Yamamoto that provides any enabling disclosure regarding the amount of any catechin for use in a food and/or beverage. While Yamamoto discusses the ability to combine EGCG3"Me as part of a food or beverage as a carrier, Yamamoto fails to disclose or suggest how and in what amounts the ingredient should be included as part of the beverage. Thus, the claimed invention specifically states that "one or more ingredients of EGCG3"Me, GCG3"Me,



EGCG4"Me, GCG4"Me and strictinin are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg and the EGCG3"Me, GCG3"Me, EGCG4"Me, GCG4"Me and strictinin are extracted from at least one selected from the group consisting of Benifuki, Benihomare and Benifuji". Therefore, Applicant respectfully submits that similarly to Sano, Yamamoto fails to disclose each feature claimed in the present claimed invention. Consequently, withdrawal of the rejection of claim 1 is respectfully requested.

Claims 2 – 4 and 9 are dependent on claim 1 and are considered patentable for the reasons presented above with respect to claim 1.

In view of the above remarks, Applicant respectfully submits that Yamamoto fails to disclose or suggest anything makes the invention as claimed in claim 1 unpatentable. As claims 2 – 4 and 9 are dependent on claim 1, it is respectfully submitted that these claims are patentable over Yamamoto. Consequently, withdrawal of the rejection of claims 1 – 4 and 9 is respectfully requested.

**Rejection of Claims 2 - 4 under 35 U.S.C. § 103(a)**

Claims 2 – 4 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Shokuin Kenkyu Seika Jyohou (National Food Research Institute). Applicants respectfully submit that Shokuin neither discloses nor suggests the features of the present claimed invention.

The rejection asserts that Shokuin discloses all of the features claimed in claim 1 but does not specifically disclose or suggest that EGCG3"Me is obtained as tea extracts or as ground tea as claimed in amended claim 2. The Rejection further asserts that it would be obvious to modify Shokuin in order to include this feature depending on the users preference in drinking tea thus rendering claims 2 – 4 obvious. Applicant respectfully disagrees. Specifically, as discussed above, Shokuin fails to disclose or suggest a food or drink having an antiallergenic action that includes "one or more ingredients of EGCG3"Me, GCG3"Me, EGCG4"Me, GCG4"Me and strictinin are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg and the EGCG3"Me, GCG3"Me, EGCG4"Me, GCG4"Me and strictinin are extracted from at least one selected from the group consisting of Benifuki, Benihomare and

Benifuji” as recited in claim 1. Shokuhin describes the variation in the content of EGCG3”Me due to the tea time and tea type prepared from particular tea leaves. While Shokuhin describes using EGCG3”Me as an antiallergenic, Shokuhin is merely concerned with identifying preferred times for picking the leaves and the preferred type of tea prepared from the leaves in order to increase EGCG3”Me content. This is fundamentally different from the claimed invention which provides a “food/drink having an antiallergenic action...wherein one or more ingredients of EGCG3”Me, GCG3”Me, EGCG4”Me, GCG4”Me and strictinin are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg and the EGCG3”Me, GCG3”Me, EGCG4”Me, GCG4”Me and strictinin are extracted from at least one selected from the group consisting of Benifuji, Benihomare and Benifuji”. Shokuhin is concerned with an entirely different an unrelated action than the claimed invention. Unlike the present claimed invention, Shokuhin seeks to maximize extraction amounts using a tea leaf picking time which is correlated to specific types of tea leaves. Shokuhin fails to disclose or suggest “food/drink having an antiallergenic action...wherein one or more ingredients of EGCG3”Me, GCG3”Me, EGCG4”Me, GCG4”Me and strictinin are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg” as in the claimed invention.

In view of the above remarks and amendments to the claims, Applicant respectfully submits that Shokuhin fails to make the invention claimed in claim 1 unpatentable. As claims 2 – 4 are dependent on claim 1, it is respectfully submitted that claims 2 – 4 are also patentable over Shokuhin. Consequently, withdrawal of the rejection of claims 2- 4 is respectfully requested.

**Rejection of Claim 10 under 35 U.S.C. § 103(a)**

Claim 10 is are rejected under 35 U.S.C. § 103(a) as being unpatentable over Yamamoto et al. (EP 1 157 693) in view of Humphrey (US 6,036,991).

Amended claim 10 provides a tea bag sealed tea including one or more selected from the group consisting of EGCG3”Me, GCG3”Me, EGCG4”Me, and GCG4”Me and strictinin contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg, wherein EGCG3”Me, GCG3”Me, EGCG4”Me, GCG4”Me and strictinin are extracted from at least one selected from the group consisting of Benifuji, Benihomare and Benifuji. For the reasons

presented below, Yamamoto alone or in combination with Humphrey fail to disclose or suggest each feature claimed in claim 10.

As discussed above Yamamoto (and Sano) fail to provide any enabling disclosure of “EGCG3”Me, GCG3”Me, EGCG4”Me, GCG4”Me and strictinin are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg and the EGCG3”Me, GCG3”Me, EGCG4”Me, GCG4”Me and strictinin are extracted from at least one selected from the group consisting of Benifuki, Benihomare and Benifuji” as in the claimed invention. The description in either Yamamoto (or Sano) an EGCG3”Me content of 241 mg in .5 liters of water is wholly unrelated and not equivalent to an amount that would be included as part of a food/drink having antiallergenic action. Contrary to the claimed arrangement, the cited section of Yamamoto (or Sano) merely describes an amount of C-1 (241 mg) that was obtained through rechromatographing Fraction C on a reverse-phase column. In other words, this section describes an amount of C-1 that was obtained from 300 grams of Oolong Tea and is NOT the amount of C-1 that is contained in any food or beverage or teabag as in the claimed invention. In fact, there is nothing in Yamamoto (or Sano) that provides any enabling disclosure regarding the amount of any catechin for use in a food and/or beverage. Therefore, Yamamoto fails to disclose or suggest a teabag with “EGCG3”Me, GCG3”Me, EGCG4”Me, GCG4”Me and strictinin are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg and the EGCG3”Me, GCG3”Me, EGCG4”Me, GCG4”Me and strictinin are extracted from at least one selected from the group consisting of Benifuki, Benihomare and Benifuji” as in the claimed invention.

The Rejection acknowledges that Yamamoto neither discloses nor suggests a teabag but cites Humphrey in combination with Yamamoto in support of the assertion that claim 10 is unpatentable. Applicant respectfully disagrees. While Humphrey describes forming their invention as a teabag, Humphrey fails to disclose or suggest a teabag with any of “EGCG3”Me, GCG3”Me, EGCG4”Me, GCG4”Me and strictinin” contained therein. Humphrey does in fact describe catechins as being included in the teabag but fails to contemplate the specific catechins claimed in the present invention. Moreover, unlike the claimed invention, Humphrey is not concerned with a specific amount of catechins being included in the teabag. Instead Humphrey is concerned with the ratio of catechins to phenols contained in the tea product for the purpose of

providing an antioxidant activity when ingested (col. 2, lines 43 – 50). In fact, the catechins described in Humphrey include EGCG and EGC and thus, Humphrey is concerned with the ration of these catechins to the phenols when the tea is blended. There is nothing in Humphrey that describes using “EGCG3”Me, GCG3”Me, EGCG4”Me, GCG4”Me and strictinin” and certainly not in the amounts claimed in claim 10.

Additionally, Applicant respectfully submits that there is no reason or motivation to combine Yamamoto with Humphrey. Specifically, as discussed above, Humphrey is concerned with providing a teabag that has a desired ratio of catechins to phenols. Thus, the particular makeup of the teabag of Humphrey is delicate and, if combined indiscriminately with the therapeutic drug described in Yamamoto, the result would likely upset the specific balance of phenols and catechins in the Humphrey system. Thus, the combination would be inoperable and would not be able to function as originally intended. Additionally, the Humphrey leaf tea is designed specifically as an antioxidant and not as an antiallergenic drug such as the one described by Yamamoto.

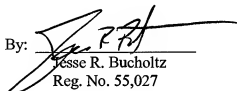
The Rejection asserts that the motivation to combine these references is that one would seek to combine the tea of Yamamoto in teabags depending on the users preference and for ease of use. Applicant respectfully disagrees because Yamamoto does not disclose or suggest tea as asserted in the Rejection. Instead, Yamamoto describes a drug having an active ingredient that is derived from tea leaves using a specified process. One would not merely use the tea leaves to make a food or drink as alleged in the rejection. Yamamoto produces an extract or powder that may be used to make food or drink. One could not readily combine the processed powder or extract that happens to be derived from tea leaves (Yamamoto) with a specific blend of tea leaves that provides a desired ratio of catechins to phenols that could happen to be formed as a teabag (Humphrey). These are two wholly unrelated compositions that cannot merely be combined within substantially affecting the composition itself or the effect that the composition is intended to have when used.

In view of the above remarks and amendments to the claims, it is respectfully submitted that Yamamoto alone or in combination with Humphrey fails to disclose or suggest a tea bag

sealed tea including one or more selected from the group consisting of EGCG3"Me, GCG3"Me, EGCG4"Me, and GCG4"Me and strictinin contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg, wherein EGCG3"Me, GCG3"Me, EGCG4"Me, GCG4"Me and strictinin are extracted from at least one selected from the group consisting of Benifuki, Benihomare and Benifuji as claimed in claim 10. Therefore, withdrawal of the rejection of claim 10 is respectfully requested.

Having fully addressed the Examiner's rejections, it is believed that, in view of the preceding amendments and remarks, this application stands in condition for allowance. Accordingly then, reconsideration and allowance are respectfully solicited. If, however, the Examiner is of the opinion that such action cannot be taken, the Examiner is invited to contact the Applicant's attorney at the phone number below, so that a mutually convenient date and time for a telephonic interview may be scheduled.

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